

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TYRELL RICHARDSON,

Petitioner,

v.

Case No. 09-cv-11088
Honorable Avern Cohn

DEBRA L. SCUTT,

Respondent.

_____/

**ORDER DENYING PETITIONER'S MOTION FOR DEFAULT
JUDGMENT AS MOOT AND COMPELLING RESPONDENT TO
PRODUCE THE NECESSARY RULE 5 MATERIALS**

This is a habeas case under 28 U.S.C. § 2254. Petitioner Tyrell Richardson is a state inmate at the G. Robert Cotton Correctional Facility in Jackson, Michigan. Petitioner, proceeding *pro se*, filed a petition for a writ of habeas corpus, alleging that he is incarcerated in violation of his constitutional rights. Before the Court is Petitioner's motion for default.

Petitioner filed his habeas petition on March 24, 2009. On March 30, 2009, the Court signed an order of responsive pleading, requiring Respondent to file an answer in accordance with Rule 5 of the habeas corpus rules by September 30, 2009. The order specifically stated that as part of the answer, Respondent shall file a copy of any prior decisions, pleadings, briefs and transcripts needed to adjudicate the issues presented. *Id.* Petitioner seeks a default because Respondent has not complied with the Court's order. A default judgment is generally unavailable in a habeas corpus proceeding on the ground

that government officials failed to file a response to the petition. See, e.g., *Allen v. Perini*, 424 F.2d 134, 138 (6th Cir. 1970).

Respondent did however file her answer on September 30, 2009, but failed to file the necessary Rule 5 materials. Those materials are necessary for resolving Petitioner's claims.

Therefore, the Court denies Petitioner's request as to Respondent's failure to file her answer as moot. Regarding the filing of the necessary Rule 5 materials, the Court orders Respondent to file those materials within twenty-one days from the date of this order.

SO ORDERED.

s/ Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: October 14, 2009

I hereby certify that a copy of the foregoing document was mailed to Tyrell Richardson, 601396, G. Robert Cotton Correctional Facility, 3500 N. Elm Road, Jackson, MI 49201 and the attorneys of record on this date, October 14, 2009, by electronic and/or ordinary mail.

s/ Julie Owens
Case Manager, (313) 234-5160